

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13209 OF 2016

Kailash N. Komera	.. Petitioner
Vs.	
Maniklal M. Shah and anr.	.. Respondents

Mr.Mangesh D.Chavan, for the Petitioner.
Mr.Chirag Shah i/b Mr.Jitendra J.Sule, for Respondent No.1.
Mr.P. M.Patil, for Respondent No.2.

CORAM : M.S.KARNIK, J.
02nd FEBRUARY, 2017

P.C. :

. The petitioner's challenge is to an order dated 03/10/2015 passed by learned Adhoc Judge, City Civil Court Greater Mumbai thereby rejecting Chamber Summons taken out by the petitioner for impleading him as a necessary/proper party to the Suit filed by the original plaintiff – present respondent No.1. The plaintiff had filed the Suit challenging the notice issued by the defendants - Municipal Corporation of Greater Mumbai (for short 'MCGM') under Section 351 of the Mumbai Municipal Corporation Act, 1888 for taking action against illegal

constructions made by the original plaintiff in the suit property. According to the petitioner, he is a tenant in respect of part of the suit property and it is on the basis of his complaint that the MCGM issued a notice under Section 351. According to the petitioner, as a result of the unauthorised construction of the lift, his right to reside in the suit premises is affected and much inconvenience is caused to him. According to him, his presence in the suit is necessary to bring these facts to the notice of the Court.

2. The learned trial Judge by the impugned order was pleased to reject the application as according to the learned trial Judge the petitioner is neither a necessary nor a proper party. In my opinion, no interference with the order impugned is warranted. The learned trial Judge is of the view that the petitioner is neither a necessary nor a proper party. The petitioner is a tenant in respect of portion of the suit property on whose complaint, MCGM has issued notice under Section 351 which is under challenge in the said Suit. Respondent No.1 –

plaintiff is essentially challenging the action on the part of the MCGM in issuing the notice under Section 351 and therefore, I do not find it a fit case to interfere with the discretion exercised by the trial Court while refusing to implead the petitioner as a party defendant. Hence, Writ Petition is rejected with no order as to costs.

(M.S.KARNIK, J.)